

**Before the  
Federal Communications Commission  
WASHINGTON, DC 20554**

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In the Matter of: )  
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Joint Application by BellSouth Corporation, )  
BellSouth Telecommunications, Inc., and )  
BellSouth Long Distance, Inc. for Provision )  
of In-Region, InterLATA Services )  
In Alabama, Kentucky, Mississippi, North )  
Carolina, and South Carolina )

WC Docket No. 02-150

**REPLY COMMENTS OF THE ALABAMA PUBLIC SERVICE COMMISSION**

John A. Garner, Administrative Law Judge  
100 North Union Street, Suite 836  
Montgomery, Alabama 36104

August 5, 2002

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**I. Introduction/Summary**

Pursuant to the Federal Communications Commission's (the "Commission's") June 20, 2002, Public Notice in the above styled cause, the Alabama Public Service Commission (the "APSC") respectfully submits these Reply Comments which set forth the APSC's responses to certain issues raised in the initial comments submitted by other parties to this cause. In particular, Section II of these Reply Comments respond to the numerous representations of AT&T Corp. ("AT&T") and WorldCom, Inc. ("WorldCom") regarding the unbundled network element ("UNE") prices for BellSouth Telecommunications, Inc. ("BellSouth") established by the APSC pursuant to its *UNE Order* entered on May 31, 2002. Section III of these Reply Comments set forth the APSC's response to the allegation of AT&T that the performance assurance plan

adopted by the APSC in its section 271 proceedings cannot be relied upon by BellSouth to support its 271 application before the Commission.

**II. The APSC's Responses to Criticisms of the UNE Prices Established for BellSouth**

**A. The Pricing Allegations of WorldCom**

WorldCom generally asserts in its initial comments in this cause that the APSC and the four other state commissions encompassed by the BellSouth 271 application under consideration by the Commission improperly adopted UNE rates which are inflated due to clear violations of TELRIC principles. More specifically, WorldCom asserts that BellSouth's utilization of multiple modeling scenarios and BellSouth's application of "loading" factors to the material price inputs utilized to calculate total installed investment produce inflated UNE rates.<sup>1</sup>

WorldCom specifically asserts in its initial comments that BellSouth's OSS rates, including the rates established for Daily Usage Files ("DUFS"), are greatly inflated. WorldCom in fact maintains that BellSouth's OSS per order rate in Alabama of \$5.83 improperly includes BellSouth's OSS development costs.<sup>2</sup> According to WorldCom, BellSouth already recovers the cost of its OSS through its common cost factor.<sup>3</sup>

Although WorldCom concedes that the full magnitude of the alleged pricing errors cannot be determined based on the information provided in BellSouth's 271 application, WorldCom nonetheless asserts that it is clear that BellSouth's rates are outside a reasonable TELRIC range.<sup>4</sup> WorldCom concludes that the clear errors committed in the establishment of BellSouth's UNE prices in Alabama and the four other

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<sup>1</sup> WorldCom Comments at pp. 14-19.

<sup>2</sup> *Id.* at p. 11.

<sup>3</sup> *Id.* at p. 12.

states encompassed by BellSouth's present 271 application severely limit residential competition in the affected states.<sup>5</sup>

The APSC notes that it considered all of the above arguments advanced by WorldCom and other Competitive Local Exchange Carriers ("CLECs") in rendering a final determination in the *APSC UNE Order*. Although the APSC expressed some reservation regarding BellSouth's multiple scenario approach, the APSC ultimately accepted BellSouth's utilization of five different scenarios for purposes of determining TELRIC compliant rates. The APSC noted that it would, in future proceedings, investigate the question of whether a model which prices all elements and combinations in a single scenario can be developed.<sup>6</sup>

The APSC similarly considered CLEC arguments regarding BellSouth's utilization of "loading", or "in-plant", factors with regard to material costs.<sup>7</sup> After due consideration of those arguments in light of the "local technological, environmental, regulatory, and economic conditions" present in Alabama, the APSC established UNE rates for BellSouth which it deemed were within a reasonable range of what TELRIC principles would be expected to produce.<sup>8</sup> The OSS per order rate and the various DUF rates established for BellSouth were part of that consideration and cannot be deemed non-compliant with TELRIC principles merely because they exceed rates established in other jurisdictions with differing underlying costs.

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<sup>4</sup> *Id.* at p. 19.

<sup>5</sup> *Id.* at pp. 19-20.

<sup>6</sup> *APSC UNE Order* at p. 24.

<sup>7</sup> *APSC UNE Order* at pp. 30-34.

<sup>8</sup> *Id.* at pp. 40-41; *Georgia/Louisiana Order* ¶52.

The APSC notes, however, that BellSouth submitted certain revised prices in its most recent Statement of Generally Available Terms and Conditions (“SGAT”) which was filed with the APSC on or about June 18, 2002. The APSC is currently investigating BellSouth’s unilateral revision of certain UNE prices in that SGAT as discussed in more detail below. Some of the revised prices in question involve decreases to DUF rates. Suffice it to say that the APSC will endeavor to ensure that CLECs have available all UNE prices which represent decreases from those previously established by the APSC.

With regard to WorldCom’s allegations of a price squeeze, the APSC contends that WorldCom’s reliance on the inadequacy of the margin between the cost associated with providing residential service utilizing the UNE platform and the revenues available from potential customers is, in and of itself, insufficient to demonstrate the existence of a price squeeze in Alabama. The APSC in fact contends that the margin inadequacies alleged by WorldCom do not alone indicate mistake or oversight by the APSC in establishing UNE rates for BellSouth. The APSC believes that the margins complained of by WorldCom are more reflective of the APSC’s long standing policy of keeping residential rates in Alabama affordable through subsidies rather than error in establishing TELRIC compliant UNE rates for BellSouth.

Although there is still uncertainty as to the appropriate analysis of price squeeze arguments in 271 proceedings, the Commission rejected price squeeze arguments similar to those raised herein by WorldCom in the *Georgia/Louisiana Order* based on

justifications similar to those raised herein by the APSC.<sup>9</sup> The APSC believes that a similar conclusion by the Commission in this case would be appropriate.

**B. The Pricing Allegations of AT&T**

Much like WorldCom, AT&T asserts that BellSouth has failed to demonstrate that it has fully implemented its obligation to set cost based recurring and nonrecurring rates that are consistent with the Commission's TELRIC methodology. In particular, AT&T asserts that BellSouth's DUF rates in four of the states, and proposed rates in the fifth state (North Carolina), far exceed the rates that a TELRIC compliant cost study would produce. AT&T further asserts that BellSouth has established in three states, including Alabama, a new "flat port charge" that is ostensibly designed to recover the cost of providing features, but that in fact raises the switching costs for every CLEC customer in ways that bear no rational relationship to BellSouth's underlying costs. According to AT&T, BellSouth's new flat port charge compounds the continuing inflation in BellSouth's switching rates that exists in all five states and independently requires a finding that BellSouth's switching rates are not cost based.<sup>10</sup>

AT&T contends that until very recently in Alabama, Mississippi, and South Carolina, BellSouth levied a "feature port additive" rate which AT&T alleges was an additional fixed monthly rate charged to CLEC customers who use BellSouth features. According to AT&T, this unwieldy average of inflated feature cost components was charged to any customer who ordered one or a dozen features from BellSouth. AT&T contends that after recognizing that its feature port additive rate was in no way TELRIC compliant, BellSouth recently dropped the separate feature port additive rate in SGAT

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<sup>9</sup> Georgia/Louisiana Order ¶¶286-287.

<sup>10</sup> AT&T Comments at p. 30.

filings in Alabama, Mississippi, and South Carolina while at the same time increasing its flat port charge by an amount equal to 55% of the former feature port additive rate. AT&T contends that this inflated features charge no more complies with TELRIC than does the original, flawed, feature port additive rate. AT&T asserts further that matters are made worse by other TELRIC errors including flawed switch discount calculations, embedded trunking cost calculations, inappropriate assumptions of combination local/tandem switches, and improper allocation of start up costs to usage and features.<sup>11</sup>

With regard to AT&T's arguments concerning the appropriateness of the DUF rates established by the APSC, the APSC reiterates that the DUF rates established for BellSouth were established following extensive proceedings wherein all interested parties were afforded an opportunity for input. The Commission established DUF rates for BellSouth which were, and are, found to be TELRIC compliant.<sup>12</sup> As noted previously, however, the APSC will ensure that the DUF rate decreases reflected in BellSouth's SGAT filing of June 18, 2002 will be available to CLECs.

With respect to AT&T's arguments concerning port and features pricing, the APSC notes that the *APSC UNE Order* established stand-alone exchange port rates to allow for the purchase of the port without switching features.<sup>13</sup> The *APSC UNE Order* also established a features per port charge of \$1.98 which is applicable to scenarios where CLECs order a port and one, all, or any combination of the features offered by BellSouth.<sup>14</sup> Importantly, however, the *APSC UNE Order* also established individual

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<sup>11</sup> AT&T Comments at p. 34.

<sup>12</sup> *APSC UNE Order* at pp. 40-41.

<sup>13</sup> *APSC UNE Order*, Attachment A, p. 6 of 25, Elements B.1.1 – B.1.7.

<sup>14</sup> *APSC UNE Order*, Attachment A, p. 6 of 25, Element B.4.13.

recurring prices for each feature offered by BellSouth such that CLECs have the option of ordering a port at the standalone rate, plus the rate established for any single feature or any combination of features. This “a la cart” pricing appears to rebut the arguments of TELRIC inappropriateness raised by AT&T with regard to the pricing of BellSouth’s switching features.

As noted previously, the APSC is in the process of investigating the rates submitted by BellSouth with its revised SGAT which was filed with the APSC on or about June 18, 2002. The APSC is naturally not concerned with the pricing revisions which represent outright decreases in said SGAT. What does concern the APSC, however, is the fact that the BellSouth’s revised SGAT combines the stand-alone port prices established by the Commission with a revised features per port rate of \$1.09. This \$1.09 charge is indeed 55% of the \$1.98 features per port rate established in the *APSC UNE Order*. This new rate will work to the benefit of CLEC in some scenarios, but will work to the detriment of CLECs in other scenarios.

The APSC will thus endeavor to ensure that the Commission’s stand-alone port rates and individual prices for switching features as established in the *APSC UNE Order* are reflected in the BellSouth SGAT so that CLECs will, at a minimum, be able to choose the option best suited to their needs. The APSC believes that having individual port rates and “a la carte” pricing of the features offered by BellSouth as a continued option in BellSouth’s SGAT will create more flexibility for CLECs and thereby increase the likelihood of more robust local competition in Alabama.



**III. AT&T's Arguments Regarding the Insufficiency of the Performance Measurement/Enforcement Plan Adopted in Alabama**

AT&T argues that because the APSC has adopted the Georgia Self Effectuating Enforcement Mechanism (“SEEM”) Plan on an interim basis, BellSouth cannot credibly rely on that performance assurance plan as a basis for its 271 application before the Commission.<sup>15</sup> In particular, AT&T asserts that at this juncture, it is impossible for the Commission to assess whether the permanent remedy plan that is ultimately adopted in Alabama will encompass a comprehensive range of carrier to carrier performance or satisfy the other key characteristics that the Commission has deemed important in evaluating whether a performance related plan will ensure future statutory compliance.<sup>16</sup>

In response to the above arguments, the APSC notes that it is well aware of the key characteristics the Commission has identified as being essential to performance measurement plans. The APSC will endeavor in future proceedings dedicated specifically to the implementation of a permanent performance assurance plan to adopt a plan that meets the Commission’s guidelines and ensures statutory compliance by BellSouth. AT&T and any other interested party will have more than adequate opportunity to participate in such proceedings before the APSC. The APSC accordingly contends that AT&T’s arguments concerning the deficiency of the APSC’s adoption of the Georgia SEEM plan on an interim basis in Alabama should be rejected.

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<sup>15</sup> AT&T Comments at p. 68.

<sup>16</sup> *Id.* at pp. 68-69.

#### **IV. Conclusion**

Based on the foregoing, the APSC concludes that the UNE rates established for BellSouth by the APSC are in all respects TELRIC compliant. The revised rates submitted by BellSouth in its most recent SGAT will be available to CLECs, however.

The APSC further contends that BellSouth should be allowed to rely on the Georgia SEEM plan adopted in Alabama on an interim basis in its present 271 application. The APSC will endeavor in the near future to develop a permanent performance assurance plan which complies with the guidelines for such plans as established by the Commission.

Respectfully submitted,

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John A. Garner  
Administrative Law Judge  
Alabama Public Service Commission